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Paper No. 7

PERKINS COIE LLP
PATENT-SEA
P.O. BOX 1247
SEATTLE WA 98111-1247

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MAR 05 2003

In re Application of
Leman, Johnson, Smith, Boe, Gagne, and Hartley
Application No. 09/472,725
Filed: December 27, 1999
Attorney Docket No. 108298578US
For: METHOD AND APPARATUS FOR FASTENING
CIRCUIT BOARDS TO COMPUTER CHASSIS

OFFICE OF PETITIONS
:
:
:
: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)
: AND
: DECISION ON PETITION UNDER
: 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.47(a), filed January 13, 2003.

This is also a decision on the petition under 37 CFR 1.137(b), filed January 13, 2003, to revive the above-identified application.

The petition under 37 CFR 1.47(a) is **dismissed**.

The petition under 37 CFR 1.137(b) is **dismissed**.

Any request for reconsideration under this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be titled "Request for Reconsideration of Petition Under 37 CFR 1.47(a) and Renewed Petition Under 37 CFR 1.137(b)."

This above-cited application became abandoned for failure to respond in an appropriate and timely manner to the "Notice to File Missing Parts of Nonprovisional Application" ("Notice") mailed February 7, 2000, which indicated that a proper declaration under 37 CFR 1.63 was missing and that filing and claim fees were also due. The Notice set forth a shortened period for reply of two months from its mailing date. No response was received within the allowable period and the application became abandoned on April 8, 2000.

Consideration under 37 CFR 1.47(a)

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the nonsigning inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee; and,
- (4) a statement of the last known address of the nonsigning inventor.

Petitioner lacks item (1) as set forth above.

As to item (1), the evidence provided with the instant petition does not demonstrate that petitioner made a diligent effort to locate inventors Gagne and Smith. Although petitioner did attempt to present the inventors with a complete copy of the application papers, the returned envelopes indicate only that there was no forwarding order in place. Petitioner must establish that a diligent effort was made to locate the non-signing inventors. Under these circumstances, diligence would require more than sending the application papers to an address where the inventors have been determined to no longer reside. Petitioner must demonstrate that a thorough search of such other resources, such as regional telephone directories and

national registries produced no results. Any renewed petition filed must be accompanied by evidence of petitioner's efforts to locate the non-signing inventors.

Consideration under 37 CFR 1.137(b):

Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of this issue fee or any outstanding balance thereof.
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d) required pursuant to 37 CFR 1.137(c).

The present petition does not satisfy item (1).

As to item (1), petitioner has failed to submit the required reply to the "Notice to File Missing Parts of Application" of February 2, 2000. Petitioner must either file a declaration signed by all of the inventors or a grantable petition under 37 CFR 1.47(a).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, DC 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 South Clark Place
Arlington, Virginia

Telephone inquiries should be directed to the undersigned at (703) 305-0010.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions